

(1) Conduct administrative hearings under these rules of practice;

(2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce testimony, documents, or other nonprivileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law, or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Issue subpoenas authorized by the Act; and

(10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules.

(d) *Disqualification; withdrawal.* (1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer may not perform functions provided for in these rules of practice regarding any matter in which they (i) have a financial interest or (ii) have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion made to the Regional Administrator request that the Regional Judicial Officer be disqualified from the proceeding. Any party may at any time by motion to the Administrator request that the Regional Administrator, a member of the Environmental Appeals Board, or the Presiding Officer be disqualified or request that the Administrator disqualify himself or herself from the proceeding. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Presid-

ing Officer may at any time withdraw from any proceeding in which they deem themselves disqualified or unable to act for any reason.

(2) If the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Presiding Officer is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned to replace him. Assignment of a replacement for Regional Administrator or for the Regional Judicial Officer shall be made by the Administrator or the Regional Administrator, respectively. The Administrator, should he or she withdraw or disqualify himself or herself, shall assign the Regional Administrator from the Region where the case originated to replace him or her. If that Regional Administrator would be disqualified, the Administrator shall assign a Regional Administrator from another region to replace the Administrator. The Regional Administrator shall assign a new Presiding Officer if the original Presiding Officer was not an Administrative Law Judge. The Chief Administrative Law Judge shall assign a new Presiding Officer from among available Administrative Law Judges if the original Presiding Officer was an Administrative Law Judge.

(3) The Chief Administrative Law Judge, at any stage in the proceeding, may reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and would not prejudice the parties.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5324, Feb. 13, 1992; 57 FR 60129, Dec. 18, 1992]

§ 22.05 Filing, service, and form of pleadings and documents.

(a) *Filing of pleadings and documents.*

(1) Except as otherwise provided, the original and one copy of the complaint, and the original of the answer and of all other documents served in the proceeding shall be filed with the Regional Hearing Clerk.

(2) A certificate of service shall accompany each document filed or

served. Except as otherwise provided, a party filing documents with the Regional Hearing Clerk, after the filing of the answer, shall serve copies thereof upon all other parties and the Presiding Officer. The Presiding Officer shall maintain a duplicate file during the course of the proceeding.

(3) When the Presiding Officer corresponds directly with the parties, the original of the correspondence shall be sent to the Regional Hearing Clerk, a copy shall be maintained by the Presiding Officer in the duplicate file, and a copy shall be sent to all parties. Parties who correspond directly with the Presiding Officer shall in addition to serving all other parties send a copy of all such correspondence to the Regional Hearing Clerk. A certificate of service shall accompany each document served under this subsection.

(b) *Service of pleadings and documents*—(1) *Service of complaint*. (i) Service of a copy of the signed original of the complaint, together with a copy of these rules of practice, may be made personally or by certified mail, return receipt requested, on the respondent (or his representative).

(ii) Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail, as prescribed by paragraph (b)(1)(i) of this section, directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or by Federal or State law to receive service of process.

(iii) Service upon an officer or agency of the United States shall be made by delivering a copy of the complaint to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii) of this section.

(iv) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the complaint in the manner prescribed by the law of the State for the service of process on any such persons, or:

(A) If upon a State or local unit of government, or a State or local department, agency, corporation or other instrumentality, by delivering a copy of the complaint to the chief executive officer thereof;

(B) If upon a State or local officer by delivering a copy to such officer.

(v) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed return receipt. Such proof of service shall be filed with the complaint immediately upon completion of service.

(2) *Service of documents other than complaint, rulings, orders, and decisions*. All documents other than the complaint, rulings, orders, and decisions, may be served personally or by certified or first class mail.

(c) *Form of pleadings and documents*. (1) Except as provided herein, or by order of the Presiding Officer or of the Environmental Appeals Board, there are no specific requirements as to the form of documents.

(2) The first page of every pleading, letter, or other document shall contain a caption identifying the respondent and the docket number which is exhibited on the complaint.

(3) The original of any pleading, letter or other document (other than exhibits) shall be signed by the party filing or by his counsel or other representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any person shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the Regional Hearing Clerk, Presiding Officer, and all parties to the proceeding. A party who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under these rules.

(5) The Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or the Regional Hearing Clerk may refuse to file any document which does not comply with

this paragraph. Written notice of such refusal, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any document refused for filing upon motion granted by the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer, as appropriate.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5324, Feb. 13, 1992]

§ 22.06 Filing and service of rulings, orders, and decisions.

All rulings, orders, decisions, and other documents issued by the Regional Administrator, Regional Judicial Officer, or Presiding Officer, as appropriate, shall be filed with the Regional Hearing Clerk. All such documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Environmental Appeals Board. Copies of such rulings, orders, decisions, or other documents shall be served personally, or by certified mail, return receipt requested, upon all parties by the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer, or the Presiding Officer, as appropriate.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5324, Feb. 13, 1992]

§ 22.07 Computation and extension of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* The Environmental Appeals Board, the Regional Administrator, or the Presiding Officer, as appropriate, may grant an extension of time for the filing of any pleading, document, or motion (1) upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or (2) upon its or his own motion. Such a motion by a party may

only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(c) *Service by mail.* Service of the complaint is complete when the return receipt is signed. Service of all other pleadings and documents is complete upon mailing. Where a pleading or document is served by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5324, Feb. 13, 1992]

§ 22.08 Ex parte discussion of proceeding.

At no time after the issuance of the complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5325, Feb. 13, 1992]